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Major development in conveyancing law in Ireland



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‘There are few aspects of land law and conveyancing law that have not been affected by the Land and Conveyancing Law Reform Act 2009.’

1 DECEMBER 2009 WAS A LONG-AWAITED day for property solicitors in Ireland. It was the commencement date for the Land and Conveyancing Law Reform Act (LCLRA) 2009, apart from one section for which no commencement date has been fixed.

This brings to conclusion a review process that started in 1987 and led to a Law Reform Commission Consultation Paper in 2004 (LRC CP 34-2004), ‘Law Reform and Modernisation of Land Law and Conveyancing Law’, a Law Reform Commission Report in 2005 (LRC 74-2005), ‘Report on Reform and Modernisation of Land Law and Conveyancing Law’ and the Land and Conveyancing Law Reform Bill 2006 that ultimately led to LCLRA 2009.

From the abolition of future fee farm grants, the fee tail, leases for lives and the rule against perpetuities, to a change in the law relating to the creation and extinguishment of appurtenant rights, the introduction of provision for the variation of trusts, and the abolition of the need for words of limitation in deeds, there are few aspects of land law and conveyancing law that have not been affected by LCLRA 2009.

FREEHOLD COVENANTS

Over 190 acts have been repealed, amended or partly re-enacted, and some well-established case law has been effectively set aside. The well-known principles of *Tulk v Moxhay* [1848], for instance, are no longer applicable. In future, the courts will not be restricted to enforcing negative covenants against the successors in title of the covenantee. Both positive covenants and negative covenants affecting freehold land will be equally enforced and will run with the land.

APPURTENANT RIGHTS

LCLRA 2009 provides that, in future, an easement or *profit à prendre* may be acquired at law by prescription only on registration of a court order. Such orders must be registered in the Registry of Deeds or Land Registry. The prescription period, after which rights by prescription are acquired, is reduced from 20 years to 12 years (30 years against the state and 60 years if it relates to foreshore). A 12-year time limit also applies to claims that such rights have been extinguished by a non-user. A certain allowance is made

for rights acquired partly before and partly after LCLRA 2009 takes effect.

Incapacity can extend the 12-year period to prevent a right being obtained, but only for a maximum of 30 years and provided that there is no trustee or other agent of the incapacitated person who could reasonably have been expected to bring an action on their behalf.

CO-OWNERSHIP

LCLRA 2009 provides that a joint tenant of land may not convey an interest in the land without the prior consent, in writing, of the other joint tenants. Such a conveyance would sever the joint tenancy and, under LCLRA 2009, would be void. For the same reason, the acquisition of another interest in such land by one joint tenant without the consent of the other joint tenants would be void.

It is also provided that, in future, registration of a judgment mortgage against the estate of a joint tenant does not sever the joint tenancy. If the debtor dies before the judgment mortgage is enforced, the surviving joint tenants take the property free of the judgment mortgage. The judgment mortgage is extinguished on the death of the judgment debtor.

PASSING OF BENEFICIAL INTEREST

The decision in *Tempany v Hynes* [1976] is effectively reversed by LCLRA 2009, which provides that when a purchaser signs a contract for the purchase of land the entire beneficial interest passed to them. This contrasts with the situation under *Tempany v Hynes*, which provided that the amount of the beneficial interest that passes to the purchaser was proportionate to the amount of the consideration that had been paid.

It is provided that the parties may set out a contrary provision in the contract.

DRAFTING DEEDS

There are several provisions that will assist in producing shorter deeds. These include the designation as additional implied covenants of standard covenants and indemnities in conveyances, leases, assignments and mortgages. For example, in an assignment of lease it will no longer be necessary to set out in detail the covenant by the assignee to pay the rent, observe

the covenants and indemnify the assignor against all claims arising from the default of the assignee.

The manner in which notices may be served under LCLRA 2009 is provided for, and includes virtually every method by which a notice could be served, from personal service to service by post, fax or e-mail, including affixing the notice to an unoccupied building. It then provides that, where an instrument makes provision for giving notice but no method of service is specified, it may be given as provided for under LCLRA 2009.

In the absence of any alternative interpretation being provided in the document, LCLRA 2009 also allows the definitions in the Interpretation Act (IA) 2005 and in LCLRA 2009 itself to be used in the construction of documents following the passing of LCLRA 2009. This will help to avoid situations such as *Vone Securities Ltd v Cooke* [1979], where an option agreement, that did not define the word 'month', gave a tenant an option to purchase the premises on giving six months' notice to the landlord prior to the termination of the lease. They gave six calendar months notice, but was held to be late as both the High Court and Supreme Court held that, at common law, a month meant a lunar month of 28 days. One of the Supreme Court judges said the situation that led to the decision was 'an unjustifiable archaism'. The Interpretation Act (IA) 1934 was in force at the time. It defined 'month' as a calendar month, but did not apply to private documents. This has now been remedied.

EXECUTION OF DEEDS

There will no longer be a requirement that a deed by an individual needs to be sealed to be valid, or that an authority to deliver a deed need be given by deed. This is retrospective and if anyone is adversely affected they may bring an application to the court within 12 years of LCLRA 2009 taking effect.

A deed by an Irish limited company should still be sealed in accordance with its articles of association and a deed by an Irish body corporate should also be executed in accordance with its own relevant legal requirements. In the case of a foreign body corporate, it will be sufficient if a deed is executed in accordance with the law in the jurisdiction in which it is incorporated.

DEED HELD IN ESCROW

LCLRA 2009 provides that the common law rule, that the affixing of a corporate seal to an instrument effects delivery, is abolished and confirms that an instrument executed by a body corporate in accordance with LCLRA 2009 is capable of being held in escrow as if the body corporate were an individual.

VOLUNTARY DEEDS

The Statute of Uses 1534 has been abolished and voluntary deeds are no longer defective if the land is not expressed to be conveyed for the use or benefit of the grantee. This is not retrospective.

TRUSTS

The law of trusts has been simplified. All trusts are dealt with apart from those relating to charities that have always been covered by separate legislation (the Charities Acts 1961, 1963 and 2009). The powers of a tenant for life are restricted to settlements created prior to the act, when they can act as trustee together with the trustees of the settlement.

In settlements subsequent to LCLRA 2009, the Act provides an order of priority for those who can act as trustees in the event that there is no trustee because of a failure to appoint in the trust instrument or otherwise. These include a person with power of sale or power to approve a sale, a person with power to appoint a trustee, or the settlor. Ultimately, an application can be made to the court to appoint a trustee in any case.

A purchaser from a trustee now benefits from the 'overreaching' provisions of LCLRA 2009, so that they get a good title from the trustee regardless of any claims by beneficiaries and regardless of being on notice of any prior equitable interests. Anyone with a claim against the land can proceed with their claim against the proceeds of sale rather than against the purchaser, who gets a clear title.

The 'overreaching' provisions are subject to any equitable interest:

- 1) to which the conveyance is expressly made subject;
- 2) protected by the deposit of documents of title relating to the legal estate or legal interest; or
- 3) in cases where there is only one trustee required, such as where there is no

express trust of land held for a minor, when such interest may be protected by registration in the Land Registry or Registry of Deeds.

There must be two trustees of a strict settlement, a trust of land held for persons by way of succession, including a trust for sale, and land vested in or held on trust for a minor. Alternatively, a trust corporation may act as trustee. There may be a single trustee of any other form of trust of land.

MORTGAGES

There are also 25 sections dealing with mortgages, starting with the provision that, in future, mortgages can be created by way of charge only. This will now apply to unregistered titles, where previously they have applied to registered titles in the Land Registry. There will be no further mortgages by conveyance, assignment or demise.

The mortgagees' right to consolidate housing loan mortgages has been abolished. Such a mortgagor can now redeem the mortgage on their house without being obliged to redeem any other mortgage at the same time relating to the same or other property, with the same mortgagee.

There are detailed requirements regarding the mortgagees powers to take possession of and sell property, and it is specified that in relation to housing loans these requirements may not be varied by the terms of the mortgage. The Circuit Court is given exclusive jurisdiction to deal with housing loans, otherwise applications are made to the High Court. An application can be made to the District Court in the case of abandoned property.

LCLRA 2009 makes it clear that family law legislation is not affected by its provisions.

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Tempany v Hynes [1976] IR 101

Tulk v Moxhay [1848] EWHC Ch J34

Vone Securities Ltd v Cooke [1979] IR 59